

INDIVIDUAL PRACTICES OF JUDGE P. KEVIN CASTEL
United States Courthouse
Courtroom 11D
500 Pearl Street
New York, New York 10007

Unless otherwise ordered, all civil actions before Judge Castel shall be conducted in accordance with the following practices.

1. Communications

A. Letters.

- i. Communications with the Court shall be by letter, submitted on ECF, with copies simultaneously delivered to all counsel or unrepresented parties.
- ii. If your submission requires immediate attention or contains matters that a party believes should be under seal, please fax the letter to Chambers at (212) 805-7949.
- iii. All letters must contain the docket number of the action, as well as the docket number of any related action before the Judge (e.g. 17 cv 3456(PKC) [rel. 17 cv 3457(PKC)]).
- iv. All letters must set forth the date of the next conference before the Court.

B. Requests for Adjournments or Extensions of Time. Requests for adjournments or extensions of time shall be made by letter and state the (i) the original date, (ii) the number of previous requests for adjournment or extension and whether they were granted or denied, and (iii) whether the adversary consents, and, if not, the reasons given by the adversary for refusing to consent. If the requested adjournment or extension affects any other scheduled dates, the request shall attach a proposed Revised Case Management Plan and Scheduling Order (reflecting actual dates which are business days). A request for an adjournment of time to answer a complaint should also include a request to adjourn the initial conference to a date at least 14 days after the answer would be due.

C. Telephone Calls. For docketing, scheduling and calendar matters, please call the Courtroom Deputy, Florence Nacather, at (212) 805-0131 between 8:30 a.m. and 5:00 p.m. Questions about the proper manner to proceed in a given circumstance should be raised in a letter (See 1.A.) Telephone calls to Chambers, (212) 805-0262, are reserved for situations requiring immediate attention.

D. Courtesy Copies. Courtesy copies of all pleadings (complaint, answer, counterclaim, etc.) shall be sent to Chambers **if they exceed 20 pages** in length, including exhibits, within five days of filing.

2. Proposed Orders, Stipulations and Judgments. All stipulations and orders, including consent orders, orders to show cause, preliminary injunctions, and temporary restraining orders, should be presented to the Orders Clerk (500 Pearl Street, Clerk's Office) and Judgments should be presented to the Judgments Clerk (500 Pearl Street, Clerk's Office). Counsel may also email them to orders_and_judgments@nysd.uscourts.gov.

3. Case Management Plans. For all civil cases, the parties shall confer and prepare a proposed **Case Management Plan and Scheduling Order** (a model Plan and Order is found under Judge Castel's name on the Court website) and the agreed upon Plan and Order (together with any alternate proposal) shall be brought to the Initial Pretrial Conference.

4. Motions

A. Pre-Motion Letter in Civil Cases

i. The filing of a pre-motion letter to the Court is required prior to the filing of all motions, **except** the following: (i) discovery motions (see 4.B.); (ii) motions brought by order to show cause, by incarcerated pro se litigants, for a default judgment, for appointment of lead counsel under the PSLRA, for admission pro hac vice, to withdraw as counsel and for reconsideration; and (iii) motions described in Rule 6(b)(2), Fed. R. Civ. P., Rule 4(a)(4)(A), Fed. R. App., or section 1447 of title 28.

ii. Among other **purposes**, the pre-motion letter and response enables the Court to set an appropriate briefing schedule and to explore whether the motion may be (i) obviated by an amendment to the pleadings or consent to the relief; or (ii) deferred to a different juncture in the case.

iii. The letter **shall set forth** in detail the legal and factual basis for the anticipated motion and a proposed schedule for the motion.

iv. A **response** to the letter shall be filed within four business days.

v. In the event that a pre-motion letter seeks to file a **motion to dismiss**, the party responding shall unambiguously state whether he, she or it seeks leave to amend. The pre-motion letter and response will be taken into account in deciding whether further leave to amend will be granted in the event the motion to dismiss is granted. The transmittal of a pre-motion letter for a proposed motion under Rule 12(b), Fed. R. Civ. P. stays the time to answer or move until further order of the Court.

vi. The pre-motion letter shall state in the first paragraph the date of any conference scheduled before the Court.

- B. Discovery Motions.** For discovery motions, the parties shall comply with Local Civil Rule 37.2 unless otherwise ordered. A letter presenting a discovery dispute to the Court shall contain the certification required under Rule 37(a)(1), Fed. R. Civ. P., and the full text of any a discovery request and response or objection thereto, together with any case law support and any affidavits required to adjudicate the issue. The party from whom discovery is sought shall respond within four business days and shall include any case law support and any affidavits required to adjudicate the issue.
- C. Response time.** Unless otherwise ordered, the time for a response or reply to a filed motion under the Federal Rules of Civil Procedure is as set forth in Local Civil Rule 6.1. (The response time to a pre- motion letter or discovery dispute letter are as set forth in 4.A. (iv) and 4.B.
- D. Memoranda of Law.** Unless prior permission has been granted, memoranda of law in support of and in opposition to motions are limited to 25 pages, and reply memoranda are limited to 10 pages. Memoranda of 10 pages or more shall contain a table of contents.
- E. Courtesy Copies.** Courtesy copies of **all motion papers** shall be submitted in hard copy to Chambers within five days of filing.
- F. Oral Argument on Motions.** Parties may request oral argument by letter. The court will determine whether argument will be heard and, if so, will advise counsel of the argument date.
- G. Summary Judgment.**
- i. A summary judgment movant shall provide the opposing party with a copy of its Local Rule 56.1(a)(1) Statement in Microsoft Word format within four days of filing.
- ii. The Local Rule 56.1(a)(2) Statement by the party opposing summary judgment shall set forth verbatim the text of each paragraph of the Local Rule 56.1(a)(1) Statement of the movant immediately preceding its response thereto.
- Default Judgment.** A party moving for a default judgment shall proceed by motion and not by proposed order to show cause. See Default Judgment Procedures for Judge Castel on the Court's website (www.nysd.uscourts.gov.)

5. Confidentiality Orders. Any proposed **Confidentiality Order** shall contain the following language:

Notwithstanding any other provision, no document may be filed with the Clerk under seal without a further Order of this Court addressing the specific documents or portions of documents to be sealed. Any application to seal shall be accompanied by an affidavit or affidavits and a memorandum of law, demonstrating that the standards for sealing have been met and specifically addressing the applicability of Lugosch v. Pyramid Co. of Onondaga, 435 F.3d 110, 119-120 (2d Cir. 2006) and any other controlling authority. Unless otherwise ordered, a party seeking to file an opposing party's confidential information shall so advise the opposing party fourteen (14) days in advance specifying the precise portion of the information the party seeks to use, the general purpose thereof and any redactions to which the party does not object. Within seven (7) days thereafter, the party whose confidential information is sought to be used may make an application to seal in accordance with the first paragraph of this Order, indicating the portion or portions of the information it seeks to have sealed. Nothing herein is intended to alter or modify the applicability of Rule 5.2, Fed. R. Civ. P., to this case. The redactions expressly authorized by Rule 5.2 may be made without further application to the Court.

6. Final Pretrial Submissions. Unless otherwise ordered by the Court, no later than 45 days following completion of fact and expert discovery in a civil case, the parties shall submit to the Court:

A. A proposed **Joint Pre-Trial Order** that includes the information required by Rule 26(a)(3), Fed. R. Civ. P., and also the following:

- i. The names, addresses, cell phone numbers and email addresses of all counsel participating in the trial.
- ii. Stipulations of fact and testimony, including a certification by lead trial counsel for all parties that they have met face-to-face for the purpose of endeavoring to reach agreement upon stipulations of fact and stipulations of testimony and the content of their stipulations.
- iii. A statement of the claims and defenses that remain to be tried. Any claim or defense not so identified is deemed withdrawn.
- iv. A statement by each party as to whether the case is to be tried with or without a jury, and the number of trial days needed.

v. A page and line designation of deposition testimony to be offered by each party on the party's case in chief, with any cross-designations and objections by any other party.

vi. A list by each party of exhibits to be offered in the party's case-in-chief, with one star indicating exhibits to which no party objects on grounds of authenticity, and two stars indicating exhibits to which no party objects on any ground.

vii. A statement of the damages claimed and any relief sought, including the manner and method used to calculate the claimed damages and a breakdown of its elements.

B. The parties shall confer on a schedule which results in any **motions in limine** being fully briefed and submitted motions 45 days following the completion of fact and expert discovery.

C. In addition to A and B above, in any action to be tried **to a jury**, the following shall also be submitted: (1) proposed voir dire; (2) proposed jury instructions; and (3) proposed verdict form. Submissions must be filed on ECF with an electronic copy in Microsoft Word submitted to Chambers. Unless otherwise agreed by the parties, the party with the burden of proof should prepare the initial draft of (1), (2), and (3) in sufficient time for the other side to respond. Parties should indicate the extent to which they are in agreement with the other side's proposal.

D. In addition to A and B above, in any action to be tried **to the Court without a jury**, the following shall also be submitted: the direct testimony of each witness under the control of a party (i.e. excluding adverse witnesses and witnesses whose appearance must be compelled by subpoena) shall be presented in the form of an affidavit or declaration setting forth the narrative of their testimony in numbered paragraphs. At trial, each witness whose direct testimony previously has been submitted in affidavit or declaration form shall take the stand and under oath shall reaffirm that the affidavit or declaration is true and correct. The party offering the witness then shall offer the affidavit or declaration as an exhibit, subject to appropriate objections by the opposing party, on which the court will then rule. For good cause shown, the witness then may be allowed to supplement his or her statement by additional direct testimony. Thereafter, cross-examination and any redirect shall proceed in the ordinary course. Before the close of all discovery, counsel shall meet and confer and propose to the Court a schedule on the exchange and submission of affidavits or declarations, as well as the submission of courtesy copies to the Court. The parties shall confer on a schedule and submit the same to the Court.

7. Trials and Hearings

- A. Exhibits.** All trial or hearing exhibits shall be pre-marked with exhibit letters for the plaintiff (e.g. PX A, PX B, etc.) and numbers for the defendant (e.g. DX 1, DX 2, etc.) Unless otherwise ordered, at the commencement of trial, two sets of trial exhibits shall be presented to the Court and one set to opposing counsel.
- B. Witnesses.** Ordinarily, trials and hearings continue from day to day until completed. The Court will advise if a trial or hearing will be held on a Friday (which is often reserved for motions and hearings in other actions). A party is expected to have their next witness at the Courthouse ready to testify immediately upon completion of a prior witness's testimony.